IN THE HIGH COURT OF JUDICATURE FOR
RAJASTHAN
AT JAIPUR BENCH JAIPUR.

S.B. CIVIL WRIT PETITION NO.2279/2007.

Gomti Devi and ors.
Vs.
Smt.Asharfi Devi and anr.

Date of order:- 19 November, 2007.

PRESENT
HON'BLE MR.JUSTICE MOHAMMAD RAFIQ

Shri Saransh Saini with
Shri Laxmikant Taylor for the petitioners.
Shri S.K. Gupta with
Shri Rajnish Gupta for the plaintiff-respondent No.1.

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The petitioners are the defendants in the original suit filed by the plaintiff respondent which was decreed by the trial court vide judgment dated 14/3/2001. The petitioners filed an appeal there against which is pending before the court below. During the pendency of the said appeal, they preferred an application under Order 6 rule 17 CPC on 3/2/2007 seeking certain amendments in the written-statement. The learned appellate court rejected that application vide order dated 22/2/2007 which is now being challenged by the petitioners in this writ petition.

2) I have heard Shri Saransh Saini, learned counsel for the petitioners and Shri S.K. Gupta, learned counsel for the respondents and have perused the material available on record as well as the case law cited on the subject.

3) Shri Saransh Saini, learned counsel for the petitioners argued that the suit for eviction from the suit premises was filed by the plaintiff-respondent No.1 on the ground of bonafide necessity of the suit premises by Sushil Kumar, son of the plaintiff-respondent No.2. During the pendency of appeal, the plaintiff-respondent No.2 purchased two shops in the same building in which business of printing press was being run by the plaintiff and her sons. In order to therefore incorporate the subsequent developments, the petitioners filed an application seeking amendment in the written statement. The amendment was necessary for effective and conclusive decision of the controversy between the parties. The learned first appellate court has in the impugned order misread the pleadings and the facts that the very same premises were earlier on rent with the plaintiff-respondent and having now been purchased

by her and, therefore, no additional accommodation is available. Shri Saransh Saini, learned counsel for the the petitioners further argued that the learned first appellate court has failed to appreciate that availability of premises as its owner would be altogether different. The learned first appellate court erred in law in refusing to permit the desired amendments on the premise that factum of availability of these two shops were already mentioned in the written statement and this argument could be advanced only at the time of hearing of appeal.

4) Learned counsel for the petitioners in support of his aforesaid arguments, has relied on the judgment of the Apex Court in **State of Karnataka and another Vs. All India Manufacturers Organisation and others : (2006) 4 SCC 683, Chandan Hazarika Vs. Banti Bhuyan : (2003) 10 SCC 242 and Ajeet Kumar Jain Vs. Smt.Urmila Sharma : RLR 1995(1) 739.**

5) On the other hand, Shri S.K. Gupta, learned counsel for the respondents has opposed the writ petition and argued that the fact about the availability of these two shops was already

pleaded in the written statement. Mere fact that one of these two shops has been purchased by the plaintiff landlord, would not make any difference. It was argued that the learned first appellate court has passed a reasoned and comprehensive order in rejecting the application for amendments because the amendments asked for were not considered necessary for deciding the appeal. It was argued that since the evidence on that question was allowed to be adduced, it would not make any material difference as to it what capacity the accommodation has been made available. If amendment is permitted at this stage, it would delay the decision of appeal as the same would then require remand of the matter to the trial court for recording of evidence. Learned counsel for the plaintiff-respondent therefore, submits that the impugned order is perfectly legal and does not call for any interference by this court.

6) I have given my anxious consideration to the rival submissions made at the bar and have perused the material available on record as well as the case law on the subject.

7) A perusal of the impugned order clearly reveals that two shops which are said to have been purchased by the plaintiff were already in possession of the plaintiff, one of which is being used for printing of cards and stationery material while the other is used for storage of waste papers. Possession of these shops by the plaintiff is, therefore, is not in dispute. Only development that has now occasioned subsequent to their purchase by the plaintiff is the character in which those shops are possessed by her. Whatever may be the character of the possession, whether as a tenant or owner, this question can be considered by the first appellate court even without there being any amendment. I am not persuaded to uphold the arguments advanced by the learned counsel for the petitioner that nature of possession would make a difference vis-a-vis the ground of bonafide necessity, for the shops were earlier available as tenant and now continued to be available even after their purchase by the respondent. This fact would certainly be taken into consideration by the learned first appellate court while deciding the appeal.

8) In the circumstances, therefore, the view taken by the learned first appellate court that the desired amendment is not necessary for deciding the appeal, cannot be said to be erroneous or perverse. Aforesaid judgments of the Apex Court cited by the learned counsel for the petitioners are altogether distinguishable case, ratio of which cannot be applied to the fact situation of the present case.

I, therefore, do not find any merit in this petition. This petition, which does not have any merit, is therefore dismissed. There shall be no order as to costs.

(MOHAMMAD RAFIQ), J.

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